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Acting Secretary, U.S. Department of Labor

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

THOMAS E. PEREZ,
Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

BREGY VANCLEVE, an individual;
and DISABLED EMPLOYEES
REHABILITATION, INC., a
corporation.

Defendants.

Case No.: 13-cv-03928-YGR

~~(PROPOSED)~~

CONSENT JUDGMENT & ORDER

Plaintiff, THOMAS E. PEREZ, Secretary of Labor, United States
Department of Labor (“Plaintiff” or the “Secretary”), and Defendants BREGY

1 VANCLEVE, an individual, and DISABLED EMPLOYEES REHABILITATION,
2 INC., a corporation (collectively, “Defendants”) have agreed to resolve the matters
3 in controversy in this civil action and consent to the entry of this consent judgment
4 (“Consent Judgment” or “Judgment”) in accordance herewith:

- 5 A. The Secretary has filed a Complaint alleging that Defendants violated
6 provisions of Sections 6, and 15(a)(2) of the Fair Labor Standards Act
7 of 1938, as amended (“FLSA” or the “Act”), 29 U.S.C. §§ 206 and
8 215(a)(2).
- 9 B. Defendants acknowledge receipt of a copy of the Secretary’s
10 Complaint.
- 11 C. Defendants acknowledge their right to retain counsel in this matter.
- 12 D. Defendants waive issuance and service of process and waive answers
13 and any defenses to the Secretary’s Complaint.
- 14 E. The Secretary and Defendants waive Findings of Fact and
15 Conclusions of Law.
- 16 F. Defendants admit that the Court has jurisdiction over the parties and
17 subject matter of this civil action and that venue lies in the District
18 Court for the Northern District of California.
- 19 G. Defendants and the Secretary agree to the entry of this Consent
20 Judgment without contest.
- 21 H. Defendants acknowledge that Defendants and any individual or entity
22 acting on their behalf or at their direction have notice of, and
23 understand, the provisions of this Consent Judgment.
- 24 I. Defendants admit that they violated Sections 6 and 15(a)(2) of the
25 FLSA, by paying at least seven of their employees wages at rates less
than the applicable federal minimum wage in workweeks when said
employees were engaged in commerce and in the production of goods
for commerce or were employed in an enterprise engaged in

1 commerce or in the production of goods for commerce, within the
2 meaning of the Act

3 Therefore, upon motion of the attorneys for the Secretary, and for cause
4 shown,

5 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that
6 pursuant to Section 17 of the FLSA, Defendants BREGY VANCLEVE and
7 DISABLED EMPLOYEES REHABILITATION, INC., their officers, agents,
8 servants, employees, and all persons in active concert or participation with them
9 be, and they hereby are, permanently enjoined and restrained from violating the
provisions of the FLSA, in any of the following manners:

10 1. Defendants shall not, contrary to Sections 6 and 15(a)(2), 29 U.S.C.
11 §§ 206 and 215(a)(2) of the Act, employ any of their employees at rates less than
12 the applicable federal minimum wage in workweeks when said employees were
13 engaged in commerce and in the production of goods for commerce or were
14 employed in an enterprise engaged in commerce or in the production of goods for
15 commerce, within the meaning of the Act.

16 2. Defendants shall not, contrary to FLSA § 15(a)(1), 29 U.S.C. §
17 215(a)(1), transport, offer for transportation, ship, deliver, or sell in commerce (or
18 ship, deliver, or sell with knowledge or reason to believe that shipment, delivery,
19 or sale in commerce is intended) goods in the production of which any employee
20 (of the Defendant or other(s)) has been employed in violation of the FLSA's
21 minimum wage provisions (29 U.S.C. § 206);

22 3. Defendants shall not request, solicit, suggest, or coerce, directly, or
23 indirectly, any employee to return or to offer to return to the Defendants or to
24 someone else for the Defendants, any money in the form of cash, check, or any
25 other form, for wages previously due or to become due in the future to said

1 employee under the provisions of this judgment or the FLSA; nor shall Defendants
2 accept, or receive from any employee, either directly or indirectly, any money in
3 the form of cash, check, or any other form, for wages heretofore or hereafter paid
4 to said employee under the provisions of this judgment or the FLSA; nor shall
5 Defendants discharge or in any other manner discriminate, nor solicit or encourage
6 anyone else to discriminate, against any such employee because such employee has
7 received or retained money due to him from the Defendants under the provisions of
8 this judgment or the Act.

9 4. IT IS FURTHER ORDERED that Defendants shall not withhold
10 payment of \$43,613.92 which represents the unpaid minimum wage compensation
11 hereby found to be due, for the period from May 18, 2012 to June 24, 2013, to the
12 present and former employees named in Exhibit A, attached hereto and made a part
13 hereof, in the amounts set forth therein. The Secretary acknowledges receipt of the
14 \$43,613.92 minimum wage compensation..

15 5. Defendants shall further pay to the Secretary as liquidated damages
16 the additional sum of \$43,613.92, hereby found to be due, for the period from May
17 18, 2012 to June 24, 2013, to the present and former employees named in Exhibit
18 A, attached hereto and made a part hereof, in the amounts set forth therein.

19 6. In addition, Defendants agree to pay \$9,900.00 as civil money
20 penalties to the Secretary for repeat and willful violations of Section 6 of the Act
21 for the period from May 18, 2012 to June 24, 2013. Such penalties are authorized
22 by Section 16(e)(2), 29 U.S.C. § 216(e)(2) of the FLSA.

23 7. The provisions of subparagraphs 4, 5 and 6 herein will be deemed
24 satisfied when Defendants comply with the following provisions:
25

1 a. Within thirty calendar days of the entry of this Consent Judgment,
2 Defendants shall deliver a schedule to Director Susana Blanco, Wage and Hour
3 Division, United States Department of Labor, 90 Seventh Street, Suite 12-100, San
4 Francisco, California 94103 containing the last known (home) address, social
5 security number, telephone number (if known), and amount of back wages for each
6 person named in the attached Exhibit A.

7 b. Defendants will make payment of the unpaid liquidated damages to
8 the Secretary with an initial payment of \$ 4,003.92 and eleven equal monthly
9 payments of \$3,600.00 each, commencing thirty days after the entry of this
10 Consent Judgment, with subsequent payments due on the same day of each month
11 thereafter until paid in full. Defendants shall make payments by delivering to
12 Director Susana Blanco, a cashier's check or money order in the required amount,
13 with the firm name of "Disabled Employees Rehabilitation, Inc.," and "Back
14 Wages and Liquidated Damages" written on it, payable to the order of the "Wage
15 & Hour Div., Labor."

16 c. Defendants shall pay the civil money penalty described in paragraph 6
17 in twelve equal installments of \$825.00 commencing thirty days after the entry of
18 this Consent Judgment, with subsequent payments due on the same day of each
19 month thereafter until paid in full. Defendants shall make payment by delivering to
20 Director Susana Blanco, a cashier's check or money order in the required amount
21 with the firm name of "Disabled Employees Rehabilitation, Inc.," and "civil
22 money penalties" written on it, payable to the order of the "Wage & Hour Div.,
23 Labor."

24 d. Should Defendants fail to completely make any of the payments set
25 forth above on or before the dates due, Defendants shall be in default. Upon

1 default, the Secretary shall have the option of accelerating payment of the unpaid
2 balance by mailing a certified letter to Respondents' last known address. If such
3 option is exercised, the entire remaining balance shall become immediately due
4 and payable. Furthermore, Defendants will be subject to administrative charges to
5 cover debt collection of the unpaid balance and will accrue interest on the
6 remaining unpaid balance at the rate provided by 28 U.S.C. § 1961 from the date
7 of this judgment until the total amount is paid in full.

8 8. The Secretary shall allocate and distribute the back wages and
9 liquidated damages, less deductions for employees' share of Social Security and
10 withholding taxes to the persons named in the attached Exhibit A, or to their
11 estates if that be necessary, in her sole discretion, and any money not so paid
12 within a period of three years from the date of its receipt, because of an inability to
13 locate the proper persons or because of their refusal to accept it, shall be then
14 deposited in the Treasury of the United States, as miscellaneous receipts, pursuant
15 to 29 U.S.C. § 216(c). The Secretary shall be responsible for deducting the
16 employee's share of FICA and federal income taxes from the amounts paid to the
17 persons named in the attached Exhibit A, and for remitting said deductions to the
18 appropriate federal agencies.

19 9. Within ten calendar days of the entry of the Consent Decree,
20 Defendants shall post a copy of the attached Exhibit B at Defendants'
21 establishment for no less than one-hundred eighty (180) days. Exhibit B
22 summarizes terms of the Consent Decree and the employees' rights under the
23 FLSA.

24 10. The filing, pursuit, and/or resolution of this proceeding with the filing
25 of the Consent Decree shall not act as or be asserted as a bar to any action under

1 Section 16(b) of the FLSA, 29 U.S.C. § 216(b), as to any employee not named on
2 the Exhibit A attached to the Consent Findings and incorporated hereto by
3 reference, nor as to any employee named on the Exhibit A for any period not
4 specified herein for the back wage recovery provisions.

5 11. Each party shall bear all fees and other expenses (including court
6 costs) incurred by such party in connection with any stage of this proceeding to
7 date.

8 12. This Court shall retain jurisdiction of this action for purposes of
9 enforcing compliance with the terms of the Consent Decree for one year.

10 Dated this 11th day of September, 2013

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13 YVONNE GONZALEZ ROGERS
14 UNITED STATES DISTRICT COURT JUDGE
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Exhibit B

LEGAL NOTICE TO ALL EMPLOYEES

The Department of Labor conducted an investigation of BREGY VANCLEVE and DISABLED EMPLOYEES REHABILITATION, INC., and determined that employees were owed back wages and liquidated damages for their employment during the period of May 18, 2012 to June 24, 2013. BREGY VANCLEVE and DISABLED EMPLOYEES REHABILITATION, INC., have agreed voluntarily to pay the penalties, back wages and liquidated damages calculated by the Department, and take other affirmative steps to achieve compliance with the Fair Labor Standards Act.

The Fair Labor Standards Act provides that all employees must be paid minimum wage for all hours worked. In addition, all employees must be paid the overtime rate of time and one half their regular rate for hours worked over 40 in a workweek. All hourly employees are entitled to overtime when they work over 40 hours.

If you think you are not being paid in accordance with the law, you can call the U.S. Department of Labor, Wage and Hour Division, at 1-866-4-USWAGE (1-866-487-9243) and your name will be kept confidential.